No. 207.

Office Supreme Court, U.S.
FILED
MAR 13 1901
JAMES H. McKENNEY,
Clerk

Brf. of Conrad & Mackey for Def
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Supreme Court of the United States.

OCTOBER TERM, 1900.

Filed Mar. 13, 1901.

No. 207.

HENRY M. BAKER, PETITIONER,

vs.

HORACE S. CUMMINGS.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

MOTION OF DEFENDANT CUMMINGS TO DISMISS FOR WANT OF JURISDICTION AND BRIEF IN BEHALF OF MOTION TO DISMISS.

HOLMES CONRAD,
FRANKLIN H. MACKEY,
Attorneys for Defendant.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 3-13-'01

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 207.

HENRY M. BAKER, PETITIONER,

vs.

HORACE S. CUMMINGS.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

Motion of Defendant Cummings to Dismiss for Want of Jurisdiction.

Now comes the defendant, Horace S. Cummings, and, by his attorneys, moves the court to dismiss this cause because it appears on the face of the record that the amount in controversy is less than five thousand dollars.

HOLMES CONRAD,
FRANKLIN H. MACKEY,
Attorneys for Defendant.

CLARENCE A. BRANDENBURG, Esq.,
Attorney for Petitioner:

Take notice that when this cause is reached on the call for argument we shall bring the above motion to the attention of the court and ask the granting of the same.

HOLMES CONRAD,
FRANKLIN H. MACKEY,
Attorneys for Defendant.

Service acknowledged this 12th day of March, A. D. 1901.

C. A. BRANDENBURG,
For Petitioner.

Brief in Behalf of Motion to Dismiss.

1. The amount claimed by Baker in his declaration (Rec. / —) is $2,712.81, with interest thereon at 6 per cent. per annum from July 31, 1889, to February 19, 1900, the latter being the date of the filing of petition of certiorari herein, the aggregate of principal and interest up to said date being less than $5,000—that is to say, $4,430.01.

2. Cummings by his claim shows that the greatest amount he can recover under his plea of set-off (Rec., 8) is one-half of 25 per cent. of the amount received by Baker on the "Inspector cases" since February 10, 1889, that date being three years prior to the filing of his plea of set-off, and this also amounts to less than $5,000—to be exact, $4,937.58—as appears from the items of the bill of particulars filed with said plea of set-off, which items are as follows:

Name of claimant.	Date when collected.	Amount collected.
Butler, John H	March 21, 1889	$907.71
Call, Henry	March 22, "	687.00
Dearborn, Benjamin C	March 25, "	207.00
Fleury, Allen S	March 27, "	1,028.59
Grady, John E	March 23, "	403.67
Haggerty, James S	March 22, "	1,448.07
Lee, William G	March 22, "	699.66
Lander, Peter	March 23, "	711.00
Morris, Charles H., ex'r	March 25, "	2,699.33
Morris, Albert, ex'r	March 26, "	2,699.33
Oliver, W. W	March 23, "	769.58
Paine, Philip H	March 25, "	1,682.98
Ramsdell, T. J	March 23, "	2,466.87
Ricard, Mary	March 23, "	1,411.76
Singer, Sarah N	March 21, "	1,035.00
Starkweather, J. H	March 21, "	188.70
Smith, James B	March 21, "	2,007.82
Smith, James B	March 21, "	771.40
Starkweather, J. H	March 21, "	496.22
Thomas, Edward A	March 22, "	148.32
Welsh, David C	March 23, "	1,459.05
		$23,868.97
Fee of 25 per cent. on this amount is		5,967.24
One-half of this amount being Cummings' share.		2,983.62
Interest on last from March 21, 1889, to February 19, 1900		1,954.27
Making total amount of Cummings' share, with interest		4,937.89

The foregoing statement shows that in no event can either party in this action recover as much as $5,000. The case should therefore be dismissed for want of jurisdiction.

HOLMES CONRAD.
FRANKLIN H. MACKEY.